



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: WILLIAM LESSARD
Reimbursement Analyst
Department of Medical Assistance Services

FROM: ELIZABETH A. MCDONALD
Special Counsel to DMAS

DATE: March 29, 2007

SUBJECT: Final Regulation to Provide Supplemental Payments for Services
Provided by Type I Physicians

I have reviewed the attached final regulation that will create a category of physicians who are members of practice plans affiliated with either a state academic health system or an academic health system under a state authority and includes a hospital. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (“DMAS”) has the legal authority to promulgate the final regulation and if the final regulation comports with state and federal law.

Based on that review, it is this Office’s view that the DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority. The authority for the previous emergency regulation is Item 325 EE of the 2002 Acts of Assembly (Chapter 899), which states that “The DMAS shall amend the State Plan of Medical Assistance Services to reimburse state academic health systems and academic health systems that operate under a state authority to reimburse their affiliated physician groups based on the lesser of billed charges or the Medicare fee schedule.” For the previous proposed regulation as well as

this final regulation the authority is Item 325 AA Acts of Assembly (Chapter 899), which states that “The DMAS shall also develop and pursue cost saving strategies with the cooperation of the same service providers identified in Item 325Z¹ that focus on maximizing upper payment limits.”

It appears that several changes to the final regulation are not changes with “substantial impact,” and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation. Please note that Virginia Code § 2.2-4013(B) requires that all changes to the proposed regulation be highlighted in the final regulation, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may (but is not required to) direct DMAS to provide additional thirty days to solicit additional public comment on the changes. In addition, Virginia Code § 2.2-4007(K) requires the agency to solicit additional public comment, if it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please contact me at 786-3890.

cc: Kim F. Piner
Senior Assistant Attorney General

¹ Z.1. The Department of Medical Assistance Services shall develop and pursue cost saving strategies with the cooperation of the Department of Social Services, Virginia Department of Health, Office of the Attorney General, Comprehensive Services Act program, Department of Education, Department of Juvenile Justice, Department of Mental Health, Mental Retardation and Substance Abuse Services, Virginia Department of Aging, Department of the Treasury, University of Virginia Health System, Virginia Commonwealth University Health System Authority, Department of Corrections, federally qualified health centers, local health departments, local school divisions, community service boards, local hospitals, and local governments, that focus on optimizing Medicaid claims and cost recoveries.

2. The Department shall submit quarterly status reports on the successful implementation of these strategies to the Department of Planning and Budget, beginning September 2002 and continuing throughout the biennium.

3. The savings paid by the identified service providers pursuant to these strategies shall be recovered and deposited into the state treasury as nongeneral fund revenue to the credit of the subprogram Medical Assistance Services Cost Containment. These funds shall be used by the Department either for direct expenditures or for transfer to the general fund for the purposes specified in this Item.